IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, et al., ex rel.	:	
CHARLES STRUNCK, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	**Civil Action No. 12-CV-0175**
	:	
MALLINCKRODT ARD LLC.	:	
(f/k/a Mallinckrodt ARD, Inc.;	:	
f/k/a Questcor Pharmaceuticals, Inc.),	:	
	:	
Defendant.	:	
	:	
UNITED STATES OF AMERICA, et al., ex rel.	:	
SCOTT CLARK,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	**Civil Action No. 13-CV-1776**
MALLINCKRODT ARD LLC.	:	
(f/k/a Mallinckrodt ARD, Inc.;	:	
f/k/a Questcor Pharmaceuticals, Inc.),	:	
	:	
Defendant.	:	

ORDER

The Government's Motion to Consolidate is hereby Granted. IT IS ORDERED that,

1. The above-captioned cases are consolidated pursuant to Fed. R. Civ. P. 42(a)(2), with *United States ex rel. Strunck v Mallinckrodt ARD LLC*, Case No. 1:12-cv-0175, to be designated the lead case, and all future filings shall be submitted under that caption.

2. This Order shall not affect the right of any Party to assert the application of 31 U.S.C. § 3730(b)(5) or to seek a separate trial pursuant to Fed. R. Civ. P. 42(b).

3. Although Mallinckrodt plc was named as a defendant in one of the two actions being consolidated, it was not served and is not named as a defendant in the United States' Complaint in Intervention, which is now the only operative complaint in this action. Accordingly, upon the stipulation of the parties, Mallinckrodt plc is terminated from this action.

IT IS SO ORDERED,

This _____ day of July, 2019.

HONORABLE BERLE M. SCHILLER
Judge, United States District Court

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, et al., ex rel.	:	
CHARLES STRUNCK, et al.,	:	
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Plaintiffs,	:	
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v.	:	**Civil Action No. 12-CV-0175**
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MALLINCKRODT ARD LLC.	:	
(f/k/a Mallinckrodt ARD, Inc.;	:	
f/k/a Questcor Pharmaceuticals, Inc.),	:	
	:	
Defendant.	:	
	:	
UNITED STATES OF AMERICA, et al., ex rel.	:	
SCOTT CLARK,	:	
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Plaintiffs,	:	
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	:	**Civil Action No. 13-CV-1776**
MALLINCKRODT ARD LLC.	:	
(f/k/a Mallinckrodt ARD, Inc.;	:	
f/k/a Questcor Pharmaceuticals, Inc.),	:	
	:	
Defendant.	:	

THE GOVERNMENT'S UNOPPOSED MOTION TO CONSOLIDATE CASES

The United States respectfully moves the Court to consolidate the above-captioned cases pursuant to Federal Rule of Civil Procedure 42(a)(2), on the grounds that these cases involve common questions of law and fact. The United States respectfully submits that such consolidation is for administrative purposes and does not affect the merits of either case, or whether 31 U.S.C. § 3730(b)(5) applies to any of the claims alleged in the complaints filed by

Relators in either case. Counsel for Relators and Defendant in each case have informed the United States that they do not oppose this request, but Defendant reserves the right to move for a separate trial under Fed. R. Civ. P. 42(b). The United States submits contemporaneously with the motion its memorandum in support of consolidation.

A proposed order accompanies this Motion.

Respectfully submitted,

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Date: July 3, 2019

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, et al., ex rel. CHARLES STRUNCK, et al.,	:
Plaintiffs,	:
v.	: **Civil Action No. 12-CV-0175**
MALLINCKRODT ARD LLC. (f/k/a Mallinckrodt ARD, Inc.; f/k/a Questcor Pharmaceuticals, Inc.),	:
Defendant.	:
UNITED STATES OF AMERICA, et al., ex rel. SCOTT CLARK,	:
Plaintiffs,	:
v.	: **Civil Action No. 13-CV-1776**
MALLINCKRODT ARD LLC. (f/k/a Mallinckrodt ARD, Inc.; f/k/a Questcor Pharmaceuticals, Inc.),	:
Defendant.	:

MEMORANDUM IN SUPPORT OF THE UNITED STATES' UNOPPOSED MOTION TO CONSOLIDATE

The United States submits this memorandum in support of its unopposed motion to consolidate the above-captioned cases pursuant to Federal Rule of Civil Procedure Rule 42(a)(2). Defendant and the Relators in each case consent to this Motion.

DISCUSSION

Relators Charles Strunck and Lisa Pratta filed their original *qui tam* case in the Eastern District of Pennsylvania under seal in accordance with the False Claims Act, 31 U.S.C. § 3729, *et seq*., on January 27, 2012 (the "Strunck Case"). Relator Scott Clark filed his *qui tam* case on or about July 4, 2013 (the "Clark Case"). Both cases are currently pending before this Court. On March 6, 2019 the United States filed its notice of election to intervene in both the Struck and Clark Cases. On June 4, 2019, the United States filed the same Complaint in Intervention in both the Strunck and Clark Cases, which sets forth the allegations the United States is proceeding with in the cases.

Consolidation is governed by Federal Rule of Civil Procedure 42(a), which permits cases to be consolidated for the economy and convenience of the court and the parties, where such cases involve common questions of law or fact, while allowing the consolidated cases to retain their separate identity. Fed. R. Civ. P. § 42(a). *In re Community Bank of Northern Virginia*, 418 F.3d 277, 298 n.12 (3d Cir. 2005) ("As stated by the Supreme Court, 'consolidation is permitted as a matter of convenience and economy in administration, but does not merge the suits into a single cause, or change the rights of the parties, or make those who are parties in one suit parties in another.'") (quoting *Johnson v. Manhattan Ry. Co.*, 289 U.S. 479, 496-97, 52 S. Ct. 721 (1933)); *see Cella v Togum Constructeur Ensemleier en Industrie Alimentaire*, 173 F.3d 909, 912 (3d Cir. 1999) ("[W]hile a consolidation order may result in a single unit of litigation, such an order does not create a single case for jurisdiction purposes.").[1]

[1] The cases thus retain their separate identity for purposes of the application 31 U.S.C. § 3730(b)(5).

In particular, consolidation can be appropriate to bring efficiencies to the litigation of cases alleging the same core basis of liability. *Hagan v. Rogers*, 570 F.3d 146, 161 n.11 (3d. Cir. 2009). The Court has "broad authority to consolidate actions involving common questions of law and fact if, in its discretion, such consolidation would facilitate the administration of justice." *Eastman Chem. Co. v. AlphaPet, Inc.*, 2011 U.S. Dist. LEXIS (D. Del. Dec. 29, 2011); *see also Young v. City of Augusta,* 59 F.3d 1160, 1168-69 (11th Cir. 1995) (where the "core issue of liability" was "the same in both cases[,]" consolidation of multiple cases would be warranted).

Here, as is clear from the fact that the United States has filed the same Complaint in Intervention in both cases, and therefore is proceeding on the same core allegations in each of them, common questions of law and fact are at the heart of these matters.

There is therefore no doubt that consolidation will serve to preserve judicial resources, and the resources of the parties, and will also serve the parties' and Court's convenience by administering these matters as one unit of litigation. Counsel for the United States have conferred with counsel for the Relators and the Defendant and have been authorized to represent that: 1) Relators consent to this Motion to Consolidate; and 2) the Defendant also consents to this Motion to Consolidate provided that Defendant specifically reserves its right to move for a separate trial under Fed. R. Civ. P. 42(b) only with respect to relators' separate employment or retaliation claims against the Defendant. Accordingly, the attached Proposed Order also states that this consented-to consolidation does not affect Defendant's right to do so.

CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court consolidate the above-captioned actions for all purposes.

Respectfully submitted,

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Date: July 3, 2019

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing United States' Unopposed Motion to Consolidate Cases, as well as the accompanying memorandum of law, were sent by First Class United States Mail, postage prepaid, this 3rd day of July, 2019, to the following:

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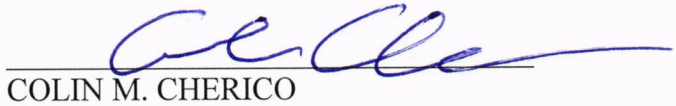

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